



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,352	06/23/2003	Finn C. Lundsgaard	CI2012/129181	1705
<div>7590 12/20/2007</div> <div>BRYAN CAVE LLP 33rd Floor 1290 Avenue of the Americas New York, NY 10104-3300</div> <div>EXAMINER GORDON, BRIAN R</div> <div>ART UNIT 1797</div> <div>PAPER NUMBER</div> <div>MAIL DATE 12/20/2007</div> <div>DELIVERY MODE PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/602,352	Applicant(s) LUNDSGAARD ET AL.	
	Examiner Brian R. Gordon	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 23, 2007 has been entered.

Response to Arguments

2. Applicant's arguments filed November 23, 2007 have been fully considered but they are not persuasive. As previously stated in the Final Office Action, applicant has amended the claims in manner such that new matter has been added which the specification does not provide adequate support of such. The claims now recite each compartment comprising two positions for securing a test device. While specification is supportive of providing a cassette 4 having multiple different sized compartments 12 or 12' there is no support for each of those compartments further having two positions or locations therein. Applicant asserts such amendment is supported by a number of specified passages as well as figures 2D and 2G. The passages do not mention a compartment having two positions therein. Applicant specifically provides the passage of page 24, lines 4-11. This passage states the **cuvette** has first and second positions. The passage makes not mention of the each **compartment** having two positions. Where is this disclosed in the specification and shown in the drawings? The passage

appears to support the examiner's position which is that while the device is said to have first and second positions. Those positions are in reference to the rotational position of the cuvette in relationship to how many of the test devices have been used accessed, detected, and returned to their respective compartments (see specification, page 22 lines 4 – page line 24). Furthermore figures 2D and 2G are not illustrative of a compartment, but show the test device/cuvette in a position outside the cassette/holder (outside the compartment 12). There are no such two positions or first and second compartment positions as claimed. The fins 10 define the compartments, but there are no further defined positions in the compartments as claimed. The only referencing to positioning observed by the examiner is that mentioned when describing how the device is intended to operate. That being initially with multiple compartments of the cassette including a cuvette (test device). The cuvettes remain closed off or unexposed to the ambience until each cuvette is rotated to a operational position where an opening exists and when at that position the cuvettes are removed and loaded with a sample and tested therein. After testing, the cuvette 14 is returned via opening back to the compartment in the cassette and the cassette is further rotated to the next compartment and the process is repeated for each compartment/cuvette until all of the cuvettes have been employed to test a respective sample.

Claim 18 has been amended to recite a method in which the device is removed from a first position in a compartment and subsequently transferred to a second position in the compartment. The first and second compartment positions are new matter not

supported by the original specification as explained above. At most a device can be removed from one compartment and returned to the same or a different compartment.

In is hereby request applicant specifically point out in the disclosure where it is recited each compartment has two positions for used and unused devices, respectively. Where does the specification disclose a method in which the device is used specifically in the manner as claimed?

In view of such the previous rejection in relevance is hereby maintained.

Due to the inclusion of new matter the art rejection of the apparatus claims has been withdrawn.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. As previously explained in the prior Office Action and herein, there is no support for each compartment having first and second test device positions or a method of use as claimed. The new unsupported matter should be canceled from the claims and the claims amended to reflect the invention as disclosed in the specification.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4-5, 11, 13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4-5 as amended suggests a test device is arranged in each position, however claim 1 only references a single test device and does not specify which position the device is located. As such the claim should read "may be arranged" rather than "is arranged".

As to claim 11, there is no antecedent basis for "the measuring chambers in line
8.

The claim should be amended as follows:

11. (Currently Amended): An apparatus according to claim 1 further comprising:
a pump for aspirating liquid sample through a liquid sample
path;
a liquid sample path for providing liquid sample to a
measuring chamber and to a filter;
a measuring chamber in fluid communication with the liquid

Art Unit: 1797

sample path.

a filter operationally engaged with a the pump for facilitating sample introduction through the liquid sample path into the measuring chambers;

a sample entry port ~~of~~ in the test device and in fluid communication with the liquid sample path which extends between the sample entry port and the measuring chamber and filter; and

~~a measuring chamber in fluid communication with the liquid sample path.~~

As to claim 13, the term “has” in line 2 should be deleted and replaced with a proper transitional phrase such as “comprising”.

Claim 16 references the test device, however claim 13 claims a plurality of test devices. As such it is unclear what test device is being referenced in claim 16. The claim should be amended to read “a test device may be arranged” in lines 2 and 4.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Brian R. Gordon/ whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian R Gordon/
Primary Examiner
Art Unit 1797

brg